IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 16 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT TAX
Versus
MANORMA SARABHAI

Appearance:
MR MANISH R BHATT for Petitioner.
MR RK PATEL for Respondent No. 1-13

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of the assessment year 1976-77 :-

1 "Whether, the Tribunal has not erred in law and

on facts in holding that the full value of the property for which the power of appointment was exercised by the assessee in favour of certain trusts could not be taken for the purpose of Gift-tax but only the value of the assessee's interest therein with reference only to the date of exercise of the power of appointment has to be taken ?"

2 "Whether, the Appellate Tribunal has not erred in law and on facts in holding that since there was no difference between the value of the shares and the value of jewellery there was no deemed gift within the meaning of Section 4(1)(a) of the Gift-tax Act,1958 ?"

3 "Whether, the finding of ther Appellate Tribunal that on the facts which were peculiar in the instant case the value of the jewellery and the value of the shares was required to be treated as equal and hence there was no question of adopting any other method for the purpose of valuation and for bringing to tax the difference on any basis (is required to be disturbed) ?"

2 We have heard Mr.M.R.Bhatt, learned Counsel for the revenue and Mr.R.K.Patel for the assessee.

3 Learned Counsel for the revenue states that question No.1 has already been considered by us in Gift Tax Reference No.2 of 1986 on 4/9/2001 and that the question has been answered against revenue. We accordingly hold that the Tribunal did not make any error in holding that full value of the property for which the power of appointment was exercised by the assessee in favour of certain trusts could not be taken for the purpose of Gift-tax but only the value of the assessee's interest therein with reference only to the date of exercise of the power of appointment has to be taken. We accordingly answer question No.1 in favour of the assessee and against the revenue.

4 With regard to questions No. 2 and 3, it is clear that the Tribunal had followed its decision in Reva Investment in Gift Tax Reference Nos. 17 and 18 of 1980 for holding in favour of the assessee that since the jewellery were only the assets of the subsidiary company in question there was no difference between the value of the shares and the value of the jewellery and therefore, there was no deemed gift within meaning of section

4(1)(a) of the Gift Tax Act,1958. That decision of the Tribunal in Reva Investment came to be reversed by this Court in Commissioner of Gift Tax vs. Reva Investment 239 ITR 224 but the assessee went in appeal before the Supreme Court which reversed the decision of this Court and restored the decision of the Tribunal after holding that section 4(c)(a) has to be considered in a broad commercial sense and not in a narrow sense. Since the subsidiary companies had no other asset, whatever was the value of the jewellery as determined by the department was in fact the value of the shares transferred by the subsidiaries to the assessee. The real value of the shares was the market value of the jewellery. If the transaction involves transfer of certain property in lieu of certain other property received, then the process of evaluation of the two items of property should be similar and if on such evaluation, it is found that there is appreciable difference between the values of the properties, then the transaction will be taken as "deemed gift". It has to be found that the transaction was on inadequate consideration and the parties deliberately showed the valuation of the two properties as the same to evade tax. The Apex Court has laid down that such conclusion cannot be drawn merely because according to the assessing officer there is some difference between the valuation of the property transferred and the consideration received.

5 Since the facts leading to this reference are similar to the facts in case of Reva Investment Private Limited vs. Commissioner of Gift Tax, 249 ITR 337, our answer to question No.2 is that the Tribunal did not err in holding that since there was no difference between the value of the shares and the value of the jewellery, there was no deemed gift within the meaning of Sec.4(1)(a) of the Gift Tax Act,1958. We accordingly answer Question No.2 in favour of the assessee and against the revenue.

6 Coming to Question No.3 also, the learned Counsel for the parties agree that in the aforesaid decision of Reva Investment Private Limited vs. Commissioner of Gift Tax, 249 ITR 337, the Apex Court had considered the same question and held that since the jewellery was only asset of the subsidiary company in question the value of the jewellery and the value of the shares were required to be treated as equal and there was no question of adopting any other mode for the purpose of valuation and for bringing to tax the difference on any basis.

7. Following the aforesaid decision in case of Reva Investment Private Limited (Supra), our answer to

Question No.3 is in favour of the assessee and against the revenue.

8. The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta, J)

m.m.bhatt